

# Groups pan proposed financial planning rule

*Comments recommend the creation of a financial planning rule that's applicable to the entire financial services industry*

■ BY JAMES LANGTON

**T**HE LATEST EFFORT TO bring some regulatory oversight to financial planning appears to be a rather modest, straightforward affair on the surface. However, things are never easy or simple in this devilishly contentious area.

In early August, the **Investment Industry Regulatory Organization of Canada** proposed a new rule that would bring some regulation to an area in which there is currently very little: financial planning. In short, the rule sets out that registered reps must conduct their financial planning activities through their dealer; it then imposes some rather flexible requirements on that activity, requiring firms to ensure their reps' proficiency and obliging them to supervise this planning activity.

The proposed rule was initially put out for a routine 30-day comment period. IIROC later extended that to 60 days, giving interested parties until early October to provide input. Even so, a number of those who provided submissions on the rule complain that the comment period was too short — particularly as it was released in the summer, when many in the industry take their vacations.

Beyond that procedural gripe, there are plenty of other complaints facing this seemingly modest proposal. Complaints address everything from the rule's proposed definition of financial planning to the requirements it introduces to the costs it would impose to doubts about the benefits it will deliver.

This volume of complaints can hardly come as a surprise to anyone who has observed past failed efforts to bring some regulation to the provision of financial planning. For one thing, it's always controversial to try to introduce regulation to an area that has traditionally gone without.

This lack of regulatory tradition also means that there is a wide range of planning activities in the market — from true professionals that provide complex, detailed plans to those that merely call themselves planners for marketing purposes but offer little genuine planning. Additionally, some of these plans are tied to product sales, whereas others are purely advice. Given this situation, there are also a number of organizations that have attempted to establish their own standards and have a vested interest in defending their particular standard.

Against that backdrop, any attempt to bring some oversight to financial planning is going to attract plenty of opposition — and IIROC's latest small effort is no exception. Most of those making submissions seem to accept the idea of regulating financial planning, but have an array of problems with this particular initiative.

For example, the Toronto-based **Financial Planners Standards Council** warns that the definition of financial planning proposed in the IIROC rule incorporates a large loophole that could render it meaningless: by excluding planning efforts that are primarily designed to lead to product recommendations from being considered financial planning, the proposed rule effect-

ively exempts most planning activity that goes on at IIROC firms.

"We suggest that the offering of all financial planning services," the FPSC submission says, "regardless of whether or not there is intent ultimately to provide investment advice, be subject to appropriate competence, practice and ethics standards."

That view is echoed by the Delta, B.C.-based **Institute of Advanced Financial Planners**. Its comment letter says that even though the IAFP lauds IIROC's intent, it is "having difficulty accepting minimal criteria and a complete exemption if one does planning with the intent of completing a product sale."

The IAFP submission further argues that dealers are in the business of providing "investment planning" that is paid for either by a commission on product sales or a fee on assets under management: "This is not the focus of a 'financial planner,' whose primary business activity is to explore financial problems and develop financial solutions, which may not involve a securities transaction."

Not only do various comments reflect criticism of IIROC's attempt to define financial planning, there's also disagreement over just who should be covered by the rule. Several submissions suggest that a rule is needed for all purported financial planners, not just those who work at investment dealers.

Mississauga, Ont.-based **Canadian Institute of Financial Planners**, for example, says in its submission that it is concerned that the IIROC rule will create confusion among consumers because

there will be planners offering services under the new IIROC rule while those who don't work for investment dealers may be offering planning services with no rules or different rules. The CFP letter also worries that there could be widely varying standards among IIROC dealers.

Conversely, there's also resistance to the idea that reps must conduct their planning activities through their investment dealer.

## The CFP's comment letter calls for an "integrated approach to rule-making"

Indeed, at the heart of a number of the complaints about the proposed rule is a worry about dealers being inserted into the planning process between the client and the planner.

"We cannot support a situation in which a dealer, who has a vested interest in meeting quotas," the IAFP comment letter says, "controls the solution that will be presented to the consumer."

Toronto-based trade association **Advocis** suggests in its comment that IIROC has not put forth a strong argument for requiring dealers to supervise financial planning. Moreover, **Advocis's** letter says, although dealers may elect to supervise the planning provided by their employees, those who are in principal/agent relationship shouldn't face the same level of scrutiny: "IIROC has not presented any substantial rationale for requiring that the financial planning activities of individuals who are not employees of [dealers] should be supervised by [dealers]."

**Advocis's** submission stresses that its "main concern" with the proposed rule is that it would require reps who are not employees of an IIROC dealer "to sub-

mit every aspect of their financial planning practice to supervision" by the dealer.

A similar complaint is voiced by the Toronto-based **Canadian Life and Health Insurance Association**, which worries about the impact of the proposed rule on dual-licensed advisors. Its submission notes: "The life insurance industry is concerned that the proposed definition of financial planning and the proposed supervision requirement, as drafted, could be interpreted as applying to the advice and recommendations of life agents that are unrelated to the products sold by the [investment dealer]."

If nothing else, this could lead to redundant oversight by both the investment dealer and the insurance industry, the CLHIA worries, resulting in needless, excessive compliance costs.

Indeed, the possible cost of this initiative is a concern for a number of those commenting. The IAFP submission indicates that it believes "the cost burden to add this level of oversight is significant."

One of the few industry firms to comment on the rule, Winnipeg-based **IGM Financial Inc.**, argues in its letter that the added costs will put IIROC dealers at a competitive disadvantage vs firms in the industry's other distribution channels.

**IGM's** submission suggests that not only could dealer costs rise as a result of this rule but firms might begin to ration the amount of planning advice they offer clients in order to avoid the new obligations. The IGM submission also argues that the flexibility in proficiency standards will put firms that push higher standards at a disadvantage compared with those that require the least rigorous standard.

Amid all these complaints, those submitting comments also have their own ideas about how such an

regulatory initiative should be pursued. The IAFP notes that it prefers the approach of the **Mutual Fund Dealers Association of Canada**, which allows planning services to be conducted through another regulated entity.

The **Investment Funds Institute of Canada's** comment letter encourages IIROC to work with the MFDA on a common policy for this area.

The CFP comment takes that a step further, calling for an "integrated approach to rule-making" by various regulators across all sectors (securities, mutual funds and insurance) and those outside the regulated financial sector (such as unregulated fee-only planners), recommending that IIROC work with other regulators to create a single, high standard for financial planners and require continuing education and membership in a professional association. In addition, it asks IIROC to support the creation of a separate organization to regulate all financial planners.

The only group that doesn't have much of a voice in this fight is clients, although they are arguably most affected. The one comment that attempts to represent the consumers comes from Toronto's **Kenmar Associates**, which calls the initiative "sorely needed."

Its comment states: "Retail clients should be able to base their financial decisions on a solid plan developed in conjunction with a professional financial planner. IIROC's improvement initiative is indeed timely and critical. This issue goes well beyond mere securities regulation — a fundamental and critical socio-economic issue is being addressed. It is important to do it right."

Unfortunately, there's little consensus in this contentious area about just what is the right way to do it.